

CHARLTONS  
易周律師行

# HKEX CONSULTATION PAPER –

Listing regime for  
overseas issuers



# OVERVIEW OF THE HKEX LISTING REGIME

## THE HKEX LISTING RULES APPLY TO:

- companies incorporated in Hong Kong
- companies incorporated in the PRC
- companies which are incorporated in neither Hong Kong nor the PRC  
(**Overseas Companies**)



# OVERVIEW OF THE HKEX OVERSEAS LISTING REGIME

## Grandfathered greater china issuer

- Centre of gravity in China; and
- primary listed on a Qualifying Exchange on or before:
  - **15 December 2017** - if it has an individual weighted voting rights structure; or
  - **30 October 2020** - if it has a corporate weighted voting rights structure.

## Non-greater china issuer

A company which is primary listed on a Qualifying Exchange and **does not** have its centre of gravity in Greater China

# OVERVIEW OF THE HKEX LISTING REGIME

## ■ SFC-HKEX JOINT POLICY STATEMENT

provides guidance to Overseas Companies wishing to list on the HKEX

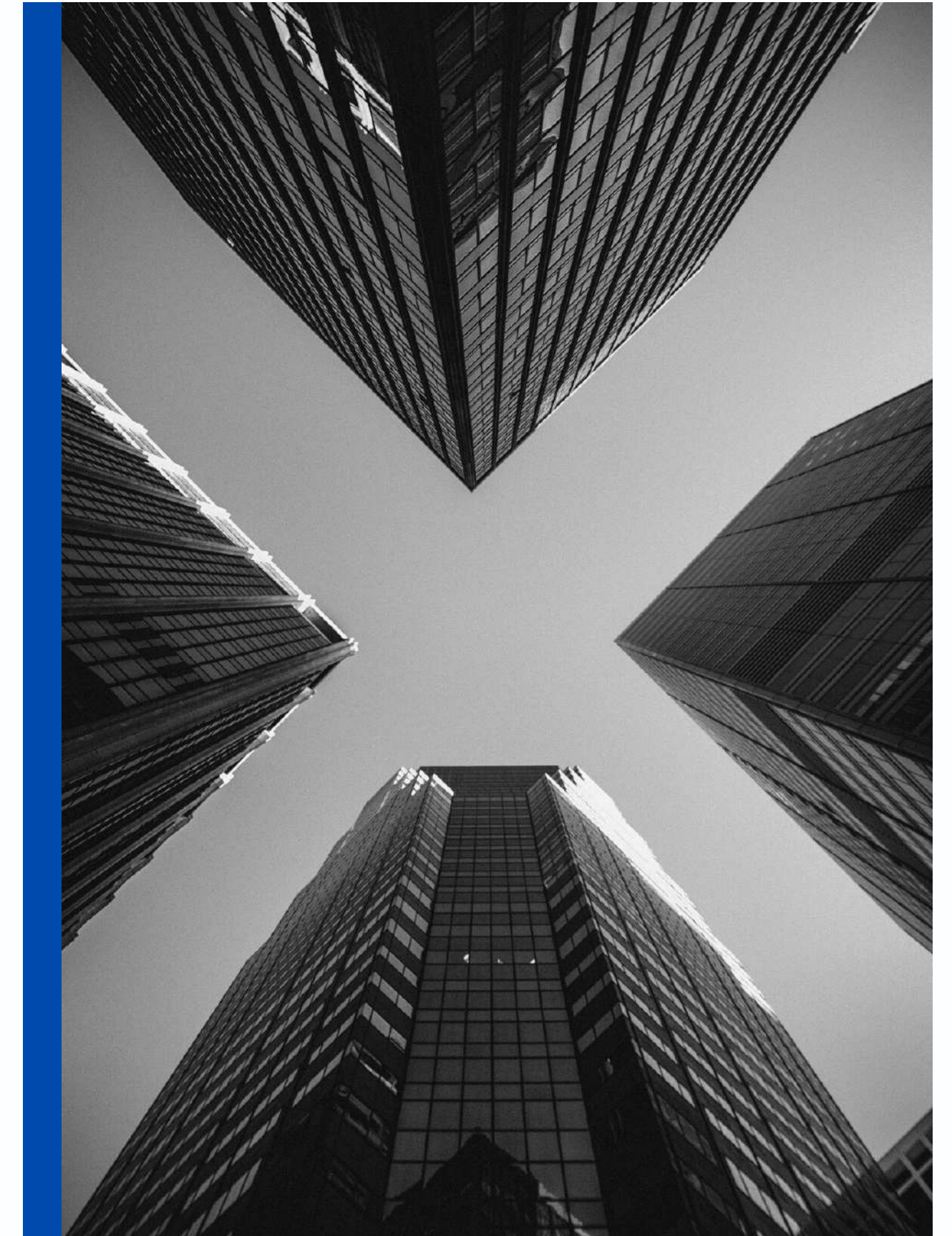
## ■ RECOGNISED JURISDICTIONS

Hong Kong, the PRC, the Cayman Islands and Bermuda

## ■ ACCEPTABLE JURISDICTIONS

Austria, Australia, Brazil, British Virgin Islands, Canada (Alberta, British Columbia and Ontario), Cyprus, England & Wales, France, Germany, Guernsey, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Republic of Korea, Labuan, Luxembourg, Netherlands, Russia, Singapore and the United States of America (California, Delaware, and Nevada).

## ■ THE EQUIVALENCE REQUIREMENT



# HKEX'S PROPOSAL TO SIMPLIFY THE OVERSEAS LISTING REGIME

## Simplify the overseas listing regime

- remove the distinction between Acceptable and Recognised Jurisdictions
- the listing regime for companies incorporated in the PRC as joint stock companies (i.e. H share issuers) will continue to be set out separately in Chapter 19A of the HKEX Listing Rules

## Shareholder protection

- all companies listed on the HKEX (including secondary listed companies) should provide the same level of shareholder protection
- 14 core shareholder protection standards

# HKEX OBJECTIVES

## HKEX Consultation Paper seeks to address:

- the complexity of the requirements for listing Overseas Companies; and
- differences in shareholder protection standards provided by companies incorporated in Recognised Jurisdictions and those incorporated in Acceptable Jurisdictions.



# COMPLEXITY AND INCONSISTENCY IN SHAREHOLDER PROTECTION STANDARDS

## Complexity:

- Chapter 19 (Overseas Issuers) and Chapter 19C (Secondary Listings of Qualifying Issuers) of the HKEX Listing Rules;
- Appendices 3 and 13 to the HKEX Listing Rules;
- The SFC-HKEX Joint Policy Statement;
- The HKEX Country Guides; and
- Various HKEX guidance materials.

## Inconsistent shareholder protection standards:

- Recognised Jurisdictions versus Acceptable Jurisdictions
- HKEX Equivalence Requirement

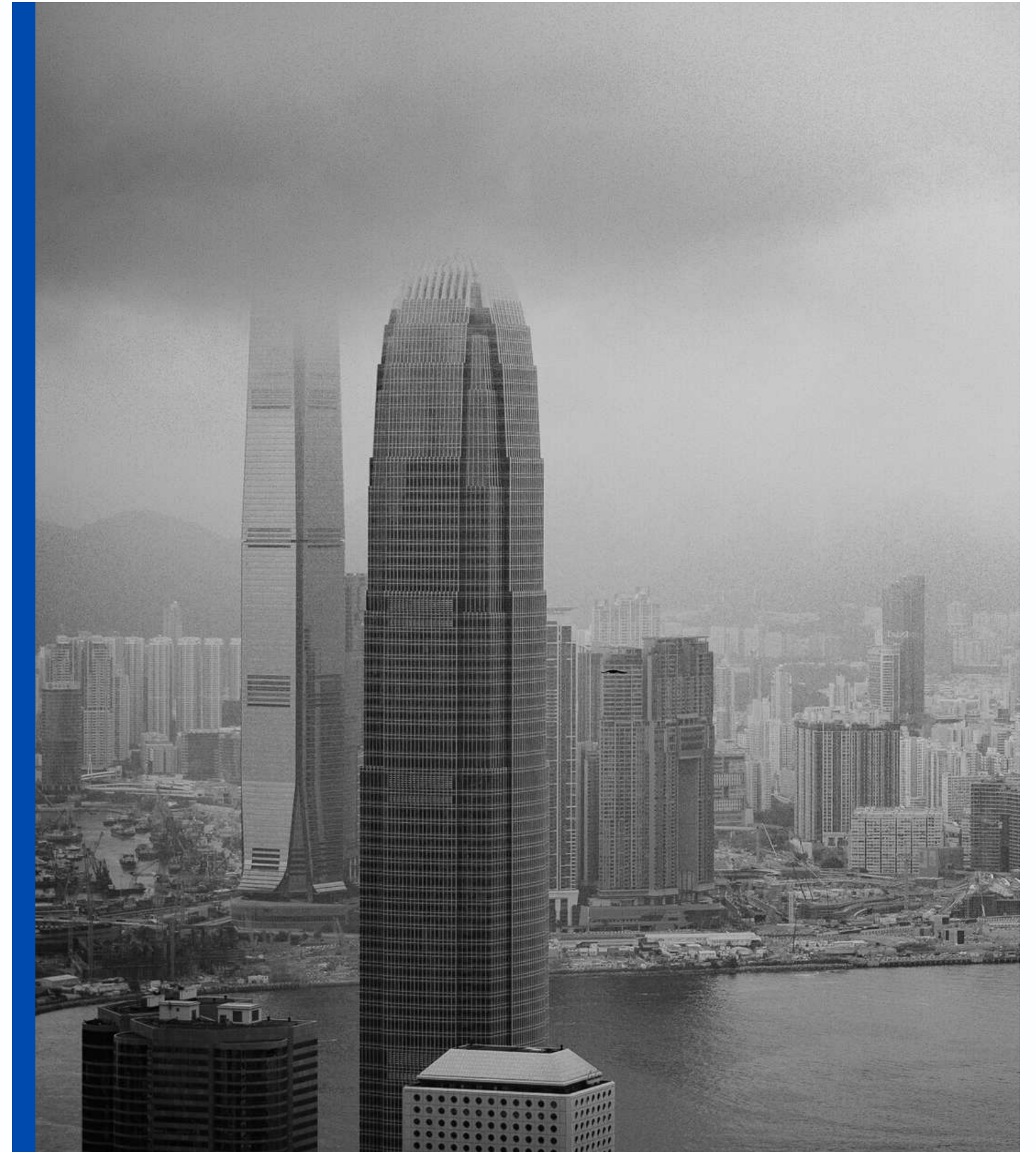


CONCERN THAT CURRENT OVERSEAS LISTING REGIME MAY BE VIEWED AS OVERLY BURDENSOME AND UNAPPEALING TO PROSPECTIVE LISTING APPLICANTS

# HKEX'S PROPOSED SHAREHOLDER PROTECTION STANDARDS

## Proposal to adopt a single set of Core Standards

- applicable to all HKEX listed companies
- HKEX Equivalence requirement to be repealed
- terms "Recognised Jurisdictions" and "Acceptable Jurisdictions" to be redundant
- the HKEX will no longer issue country guides
- proposed core standards to cover fundamental shareholders' rights





# OVERSEAS COMPANIES OBLIGATIONS' REGARDING CORE STANDARDS

## ■ CONFORM CONSTITUTIONAL DOCUMENTS TO CORE STANDARDS

Listed companies will need to conform their constitutional documents to the Core Standards or demonstrate how domestic laws + constitutional documents provide the Core Standards

## ■ LISTING DOCUMENT DISCLOSURE

- disclose the major differences between standards under domestic laws & the Core Standards; and
- highlight the risk & limitations of Hong Kong courts

## ■ ONGOING COMPLIANCE WITH CORE STANDARDS

Listed companies will be required to monitor compliance with the Core Standards



# CORE STANDARDS: REMOVAL OF DIRECTORS

*Members in a general meeting to have the power to remove any director by ordinary resolution*

- some Grandfathered Greater China companies may need to amend their constitutional documents to comply
- Grandfathered Greater China Issuers and Non-Greater China Issuers with “non-compliant WVR structures” right to remove directors may undermine the effectiveness of the permitted WVR structure
- HKEX will assess the applicability of the standard to relevant companies on a case-by-case basis

# CASUAL VACANCY APPOINTMENTS

*Appointments to fill a casual vacancy on or as an addition to the board to hold office until the next AGM and will be eligible for re-election*

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- currently provided for in Appendix 3 to the HKEX Listing Rules
- Similar provision in the Companies Ordinance (Cap. 622)
- HKEX proposes to apply the core standard to all listed companies
- some Grandfathered Greater China issuers may need to amend their constitutional documents to comply
- if this Core Standard is adopted, the “*comply or explain*” requirement on casual vacancy appointments in the Corporate Governance Code will be repealed

# TIMING OF ANNUAL GENERAL MEETINGS

*Listed companies must hold a general meeting for each financial year as their annual general meeting (AGM)*

*Note: Generally, an AGM must be held within 6 months after the financial year end*

Parts A & B of Appendix 13 & Joint Policy Statement require AGM each year within 15 months of previous AGM

Companies already listed subject to 15-month requirement to be regarded as compliant if comply with requirement that applied on listing



# NOTICE OF GENERAL MEETINGS

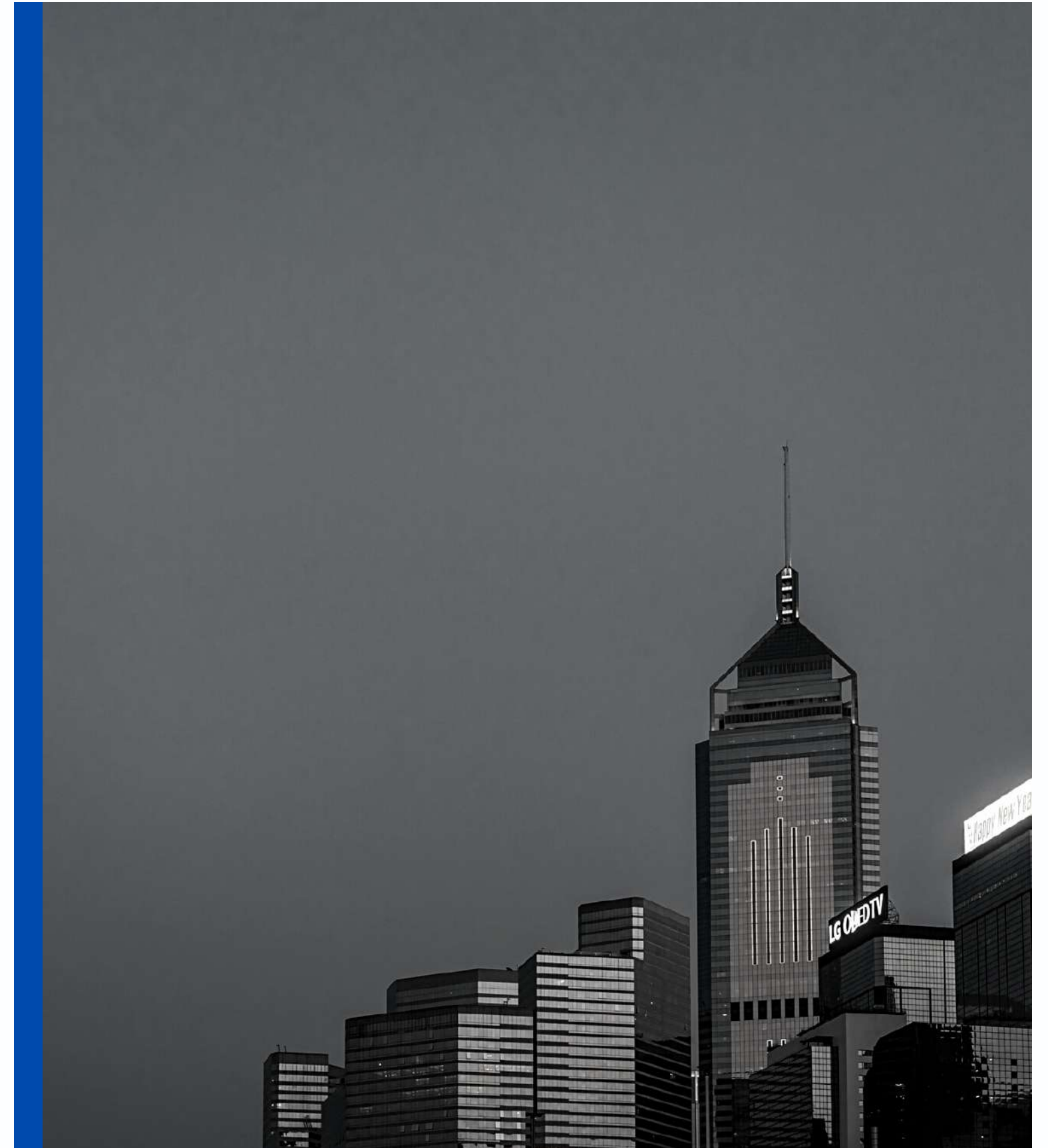
*An HKEX listed company must give its members reasonable written notice of its general meetings*

**Reasonable written notice** — means  $\geq 21$  days for an AGM and  $\geq 14$  days for other general meetings.

**PRC companies** - HKEX will accept 20 days' notice for AGMs and 15 days' notice for special general meetings.

**Companies currently listed on the HKEX** — shorter notice period will be acceptable

**Corporate Governance Code** — “comply or explain” provision in the Corporate Governance Code will be repealed



# THE RIGHT TO SPEAK AND VOTE AT GENERAL MEETINGS

*Members must have the right to speak and vote at a general meeting except where a member is required, by the HKEX Listing Rules, to abstain from voting to approve the matter under consideration*



## **SFC – HKEX Joint Policy Statement**

- members must have the right to speak and vote at a shareholder meeting
- applicable to companies incorporated in Acceptable Jurisdictions and Grandfathered Greater China issuers and Non-Greater China issuers



## **Cayman Islands, Bermuda and Hong Kong**

- no existing requirement

# RESTRICTION ON SHAREHOLDER VOTING

*Where any shareholder is required under the HKEX Listing Rules to abstain from voting on any particular resolution or restricted to voting only for or only against any particular resolution, any votes cast by or on behalf of such shareholder in contravention of such requirement or restriction shall not be counted*

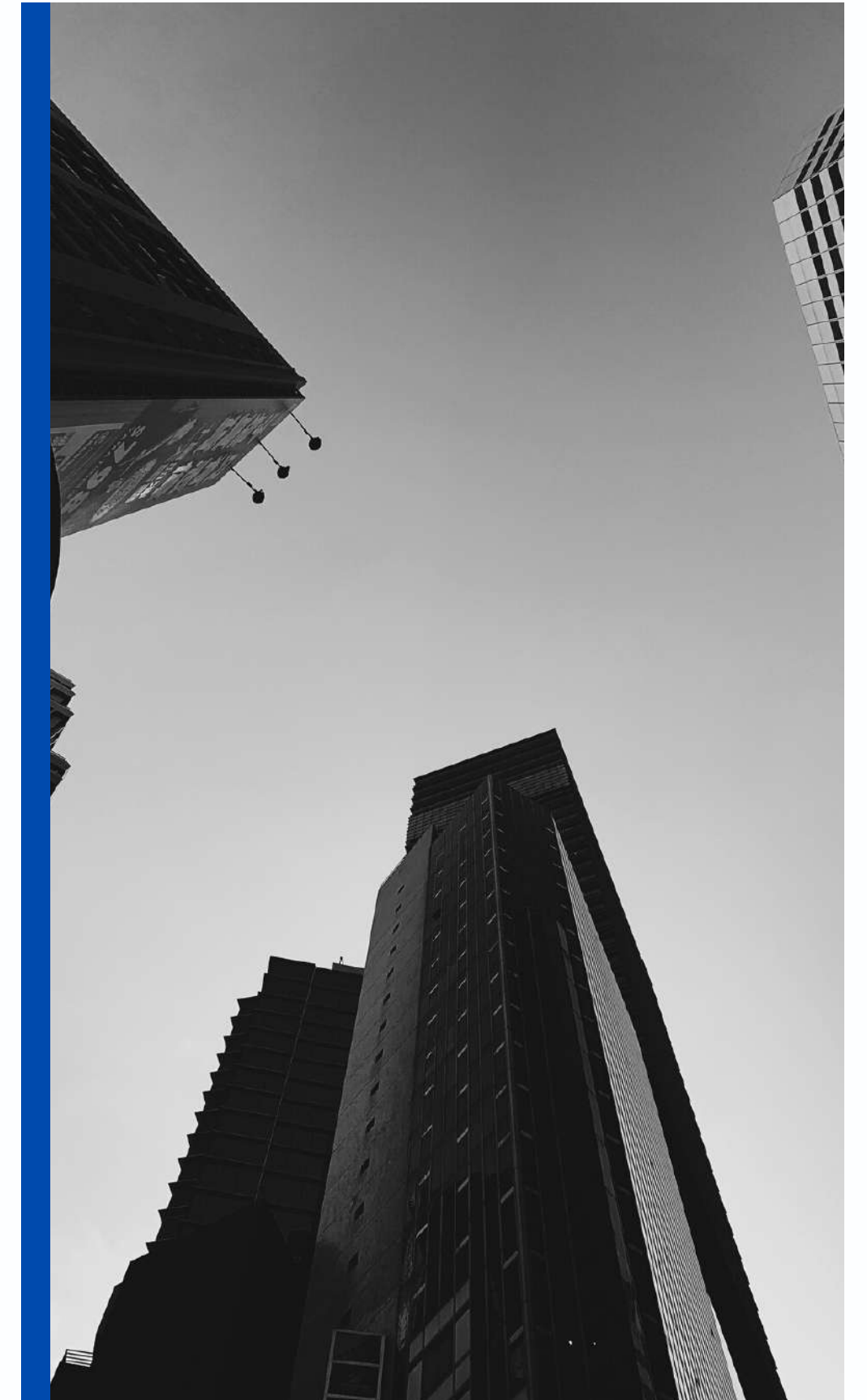
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- Currently included in Appendix 3 to the HKEX Listing Rules and also a JPS Key Shareholder Protection Standard
  - two-tier voting arrangements



# RIGHT TO CONVENE AN EXTRAORDINARY GENERAL MEETING

*Members holding shares representing no more than 10% of the voting rights must be able to convene an extraordinary general meeting and add resolutions to a meeting agenda*

- under the SFC-HKEX Joint Policy Statement, the minimum level of members' support required to convene an extraordinary general meeting must be no higher than 10%.
- HK Companies Ordinance - shareholders representing 5% of voting rights can request directors to call a general meeting





# VARIATION OF CLASS RIGHTS

*A super-majority vote of the issuer's members of the class to which the rights are attached shall be required to approve a change to those rights*

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- misalignment with respect to the threshold and quorum required for a "**super majority**" vote
  - the HKEX proposes that a "**super-majority**" should mean at least three-fourths of the voting rights of the members holding shares in that class present and voting in person or by proxy
  - it is proposed that this new Core Standard be applied to all HKEX listed companies save for PRC incorporated companies.



# AMENDMENTS TO CONSTITUTIONAL DOCUMENTS

*A super-majority vote of the issuer's members in a general meeting shall be required to approve changes to an issuer's constitutional documents, however framed*

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- A **"super-majority"** vote will be required to approve amendments to the constitutional documents of a HKEX listed company
  - The HKEX proposes that a **"super-majority"** should mean at least three-fourths of the voting rights of the members holding shares in that class present and voting in person or by proxy at the general meeting
  - It is proposed that this new Core Standard be applied to all HKEX listed companies save for PRC incorporated companies.



# APPOINTMENT AND REMOVAL OF AUDITORS

*The appointment, removal and remuneration of auditors must be approved by a majority of the issuer's members or other body that is independent of the board of directors*

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- Currently a JPS Key Shareholder Protection Standard while HK Companies Ordinance and the Mandatory Provisions have equivalent protections
  - It is proposed that this Core Standard be applied to all HKEX listed companies



# PROXIES AND CORPORATE REPRESENTATIVES

*Every member shall be entitled to appoint a proxy ... and every shareholder being a corporation shall be entitled to appoint a representative to attend and vote at any general meeting*

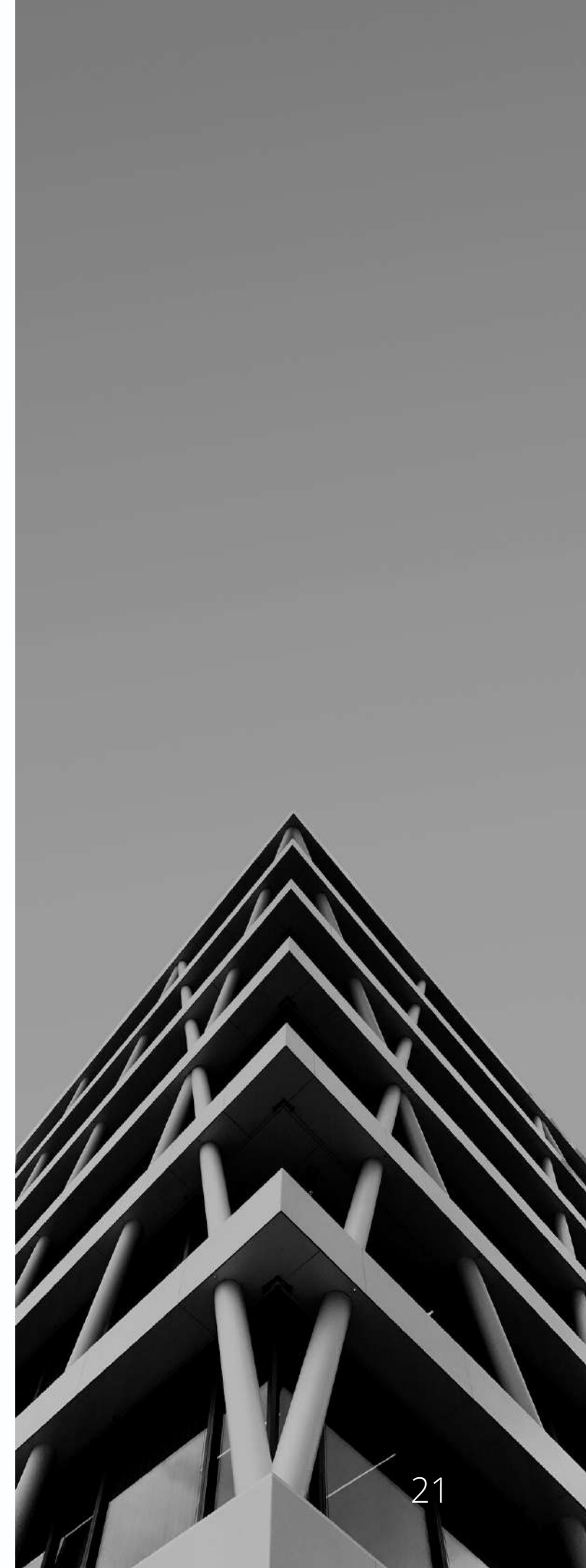
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- Currently only companies incorporated in the Cayman Islands or the PRC are subject to this requirement
- Bermuda company law provides for an equivalent provision
- The Hong Kong Companies Ordinance provides that a member of a company is entitled to appoint a proxy.
- Companies incorporated in Acceptable Jurisdictions and Grandfathered Greater China issuers and Non-Greater China issuers may need to amend their constitutional documents to comply

# HKSCC'S RIGHT TO APPOINT PROXIES OR CORPORATE REPRESENTATIVES

*HKSCC must be entitled to appoint proxies or corporate representatives to attend the issuer's general meetings and creditors meetings and those proxies/ corporate representatives must enjoy rights comparable to the rights of other shareholders, including the right to speak and vote*

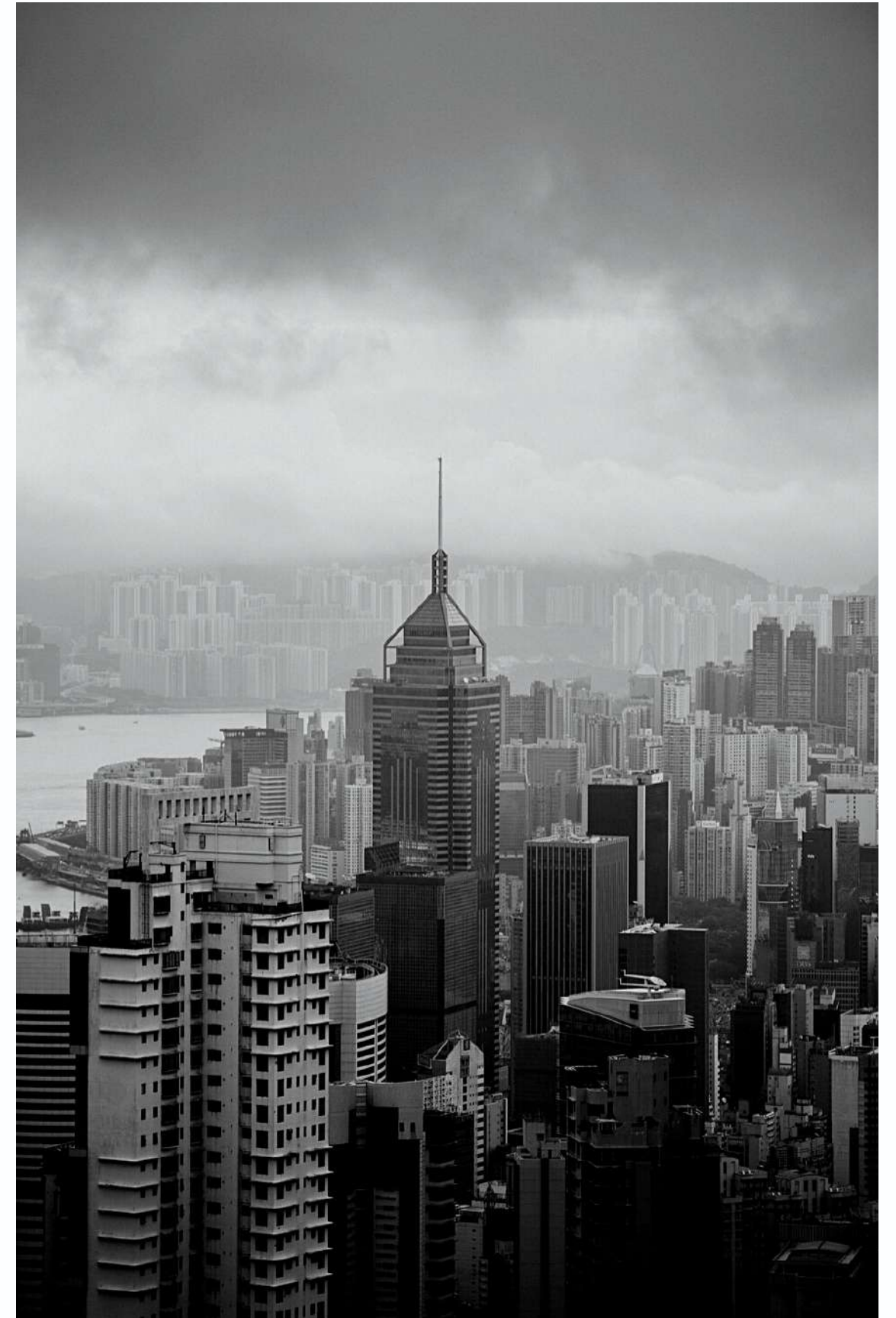
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- Currently applies to companies incorporated in Bermuda and the Cayman Islands under Appendix 13
  - It is a JPS Key Shareholder Protection Standard applicable to issuers incorporated in Acceptable Jurisdictions, Non-Greater China issuers and Grandfathered Greater China issuers
  - HKEX believes companies incorporated in the PRC and Hong Kong comply in practice



# MEMBERS' RIGHT TO INSPECT THE BRANCH REGISTER

*The branch register of members in Hong Kong shall be open for inspection by members but the company may be permitted to close the register on terms comparable to section 632 of the Companies Ordinance (Cap. 622)*

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- Cayman Islands incorporated companies are currently subject to this proposed Core Standard
  - The Bermuda company law and the Hong Kong Companies Ordinance (Cap. 622) have equivalent provisions
  - The Mandatory Provisions applicable to PRC-incorporated companies listed on the HKEX also provide for shareholders' rights to inspect the branch register



# VOLUNTARY WINDING UP

*A super-majority vote of the issuer's members in a general meeting shall be required to approve a voluntary winding up of an issuer*

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- A **“super-majority”** means **at least three-fourths** of the total voting rights of the members present and voting in person or by proxy at the general meeting
- Current misalignment between the requirements under the JPS Key Shareholder Protection Standards, the Mandatory Provisions and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)
- PRC incorporated companies to remain subject to the current requirement for a two-thirds majority under the Mandatory Provisions
- HKEX does not propose to impose a higher threshold on existing HKEX-listed companies currently subject to the Joint Policy Statement's requirement for a two-thirds majority vote



## repeal certain existing shareholder protections

- Repeal some shareholder protections in Appendices 3 and 13 to the Listing Rules; and
- the shareholder protections set out in the SFC-HKEX Joint Policy Statement,

as set out at Schedule C to the HKEX Consultation Paper

## application of proposed core standards

- Proposed Core Standards to apply to companies already listed on HKEX except where the HKEX has stated that they will not apply
- Listed companies to have until 2nd AGM after implementation to amend constitutional documents



# CODIFICATION OF JOINT POLICY STATEMENT PROVISIONS

**Regulatory Cooperation Requirement** — that statutory securities regulator in the jurisdiction of incorporation & place of central management and control must be full signatory to IOSCO MMOU — to be codified in MB Ch.8 & GEM Ch. 11

Alternative financial reporting standards

Company information sheets

Alternative auditing standards

Qualification requirements for accountants' reports



# PROPOSALS IN RELATION TO SECONDARY AND DUAL PRIMARY LISTING

## Two key proposals

(i) To expand the secondary listing regime for overseas-listed Greater China companies from traditional sectors (i.e. companies not meeting the definition of “innovative” companies as set out in HKEX Guidance Letter GL94-18) which do not have weighted voting rights structures; and

(ii) To allow companies to dual primary list on the HKEX while maintaining their existing weighted voting rights structures and variable interest entity (VIE) structures.



# ISSUES IDENTIFIED IN RESPECT OF DUAL PRIMARY LISTINGS

## Two issues identified

- The current HKEX Listing Rules and guidance materials provide no clear guidance on the basis on which the HKEX will grant waivers to primary and dual primary listed companies; and
- Currently, Grandfathered Greater China Issuers and Non-Greater China Issuers cannot apply directly to the HKEX for a dual primary listing and retain their WVR structures that do not comply with the Chapter 8A requirements



# CODIFICATION OF WAIVERS

## Primary and dual primary listed companies

- Typically, all or a majority of their equity securities trade on the HKEX
- Subject to full compliance with the HKEX Listing Rules, unless specifically waived

## Secondary listing on the HKEX

- HKEX will grant extensive waivers from the HKEX Listing Rules (through automatic waivers) because the company is subject to regulation and enforcement in the jurisdiction of its primary listing



# COMMON WAIVERS AND THE PROPOSALS

## Appendix to the SFC-HKEX Joint Policy Statement

- 14 common waivers that are currently available to Overseas Companies applying for a dual primary listing on the HKEX

## Application for common waivers required

- Waiver application must demonstrate need for common waiver and ability to meet any prescribed conditions

## The Underlying Principle

- Waiver decisions based on the underlying principle that the Overseas Company must demonstrate that strict compliance with both the relevant HKEX Listing Rule and the overseas exchange's requirement would be unduly burdensome or unnecessary (the Underlying Principle)



# PROPOSED CODIFICATION OF COMMON WAIVERS

## HKEX proposes to codify:

- the Underlying Principle (that an Overseas Company must demonstrate that strict compliance with both the relevant HKEX Listing Rule and the overseas exchange's requirement would be unduly burdensome or unnecessary); and
- certain common waivers currently set out in the appendix to the SFC-HKEX Joint Policy Statement where the underpinning principle and conditions are unlikely to change in the foreseeable future.



# GRANDFATHERED GREATER CHINA ISSUERS AND NON-GREATER CHINA ISSUERS

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## HKEX proposes to:

- allow Grandfathered Greater China Issuers and Non-Greater China Issuers to dual primary list with a Non-Compliant WVR and/or VIE structure, subject to meeting Ch.19C suitability requirements
- allow secondary- and dual primary-listed Grandfathered Greater China Issuers and Non-Greater China Issuers to retain Non-Compliant WVR and/or VIE structures on de-listing from their Qualifying Exchange

## Definitions

- Non-compliant WVR structure = WVR structure not meeting requirements of Chapter 8A & HKEX GL93-18
- Non-compliant VIE structure = VIE structure not meeting requirements of HKEX LD43-3



# ISSUES IDENTIFIED IN RELATION TO SECONDARY LISTINGS

## Key issues:

- confusion created by the co-existence of two secondary listing regimes (under the SFC-HKEX Joint Policy Statement and Chapter 19C of the Listing Rules);
- more restrictive secondary listing requirements for companies with a centre of gravity in Greater China
- lack of clarity re. HKEX's approach to granting waivers to secondary listing applicants; and
- uncertainty as to whether automatic and other waivers granted to a secondary listed company continue when: (a) the majority of trading in its shares migrates to the HKEX; or (b) it de-lists from the overseas exchange of primary listing





# PROPOSAL TO CONSOLIDATE REQUIREMENTS TO REDUCE COMPLEXITY

## Two routes to secondary listing

### SFC/HKEX Joint Policy Statement

- for Overseas Companies with centre of gravity outside Greater China
- able to meet additional eligibility requirements of Section 5 of JPS

### Listing Rules Ch. 19C

- primary listed on Qualifying Exchange
- able to meet additional eligibility requirements of Ch. 19C
- must be innovative company
- companies with centre of gravity in Greater China only eligible for secondary listing under Ch. 19C



# PROPOSAL TO CONSOLIDATE REQUIREMENTS TO REDUCE COMPLEXITY

- Ch. 19C will consolidate requirements for secondary listing
- Ch. 19 will consolidate requirements for primary listings of Overseas Companies

## Applicant to be Subject to the Regulatory Requirements of its Market of Primary Listing:

- the HKEX has the right to refuse a secondary listing where *inter alia* the secondary listing applicant has received waivers or is exempt from rules, regulations or legislation that result in it being subject to regulatory requirements that are materially less stringent than those generally applicable to entities listed on its primary market



# PROPOSED QUANTITATIVE ELIGIBILITY REQUIREMENTS FOR SECONDARY LISTING APPLICANTS

## CRITERIA A

(a) A track record of good regulatory compliance of at least 5 full financial years:

- (i) on a Qualifying Exchange for an Overseas Company without a WVR structure; or
- (ii) on a Recognised Stock Exchange for an Overseas Company without a WVR structure and without a centre of gravity in Greater China; and

(b) an expected market capitalisation at the time of secondary listing of at least HK\$3 billion

## CRITERIA B

(a) A track record of good regulatory compliance of at least 2 full financial years on a Qualifying Exchange; and

(b) an expected market capitalisation at the time of secondary listing of at least HK\$10 billion

**The aim is to consolidate the existing two routes to secondary listing by codifying the Joint Policy Statement's requirements for companies without WVR structures (Criteria A) alongside the requirements of Chapter 19C (Criteria B).**

# SECONDARY LISTING WITHOUT LISTING COMPLIANCE RECORD

The HKEX Consultation Paper proposes an exemption from the listing compliance record requirement under Criteria A or B for secondary listing applicants

- without a WVR structure
- with a market cap at listing significantly larger than HK\$10 billion

It is proposed to make secondary listings requirements for companies with a "centre of gravity" in Greater China less restrictive



# LOWER MARKET CAP. THRESHOLDS FOR GREATER CHINA COMPANIES

Companies with a centre of gravity in Greater China without a WVR structure to be able to secondary list

## under Criteria A with:

- (a) a minimum market cap. at secondary listing of at least HK\$3 bln; and
- (b) a track record of good regulatory compliance of 5 financial years on a Qualifying Exchange

## under Criteria B with:

- (a) a minimum market cap. at secondary listing of at least HK\$10 billion ; and
- (b) a track record of good regulatory compliance of 2 financial years on a Qualifying Exchange

# DISAPPLICATION OF INNOVATIVE COMPANY REQUIREMENT

## The proposed dis-application of the *'Innovative Company'* requirement

- HKEX proposes to remove the *'innovative company'* requirement

## Proposal to address regulatory arbitrage risk

- To deter attempts at regulatory arbitrage the HKEX proposes to introduce a new listing rule giving it discretion to refuse a secondary listing application where it considers the listing is an attempt to avoid the primary listing rules

## Proposed Extension of Trading Migration Requirement to all secondary listed companies

- automatic waivers granted to Greater China Issuers secondary listed under Ch.19C are revoked if majority of trading in their listed shares migrates to HKEX on a permanent basis ("trading migration requirement")
- HKEX proposes to extend trading migration requirement to all secondary listed companies

# PROPOSED CODIFICATION OF WAIVERS FOR SECONDARY LISTED COMPANIES

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- The HKEX proposes to codify certain principles according to which the HKEX will waive, modify or grant exemptions from the HKEX Listing Rules for companies applying for a secondary listing on the HKEX
- Codification of automatic waivers and certain common waivers where the HKEX believes that the underpinning principle and conditions of these waivers are unlikely to change over time



# PROPOSED REMOVAL OF PRE-EMPTIVE RIGHTS CONDITION

- HKEX proposes to remove the condition for waiver of the shareholders' consent requirement for a new issue, allotment or grant of securities under LR13.36 for secondary listed companies

# REQUIREMENT FOR BOARD DIVERSITY POLICY

- HKEX proposes that secondary listed companies are subject to the Listing Rules' requirements on board diversity





# PROPOSALS RELATING TO DE-LISTING FROM AN OVERSEAS EXCHANGE OF PRIMARY LISTING

- Listing Rules are silent on what happens to the waivers granted to a secondary listed company which de-lists from the exchange of primary listing
- HKEX proposes that where a company de-lists from its primary exchange, it will be regarded as having a primary listing on the HKEX and will need to comply with all Listing Rules applicable to a primary listed company
- Advance written notice required
- HKEX waiver applications which will be assessed on a case-by-case basis

DEADLINE FOR RESPONDING TO  
CONSULTATION PAPER — 31 May 2021

